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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re) Case No 05-28800-C-7
STEVEN K ZINNEL,)
Debtor)
_____)

MEMORANDUM DECISION AND ORDER

I INTRODUCTION

The debtor Steven Zinnel ("Debtor") seeks reconsideration of the court's November 28, 2011, order ("Order") granting the Chapter 7 Trustee's motion to sell assets and compromise. For the reasons stated below, the court denies the Motion.

II BACKGROUND

This case commenced on July 20, 2005, and was closed on June 5, 2008. On June 17, 2011, the court reopened the case upon application of the Office of the United States Trustee based on Debtor's alleged failure to disclose assets in the bankruptcy case, including possible rights and/or interests in System 3, Inc. Debtor has a criminal case pending against him in U S District Court for, *inter alia*, bankruptcy fraud (United States of America v Zinnel, et al, Case No 2 11-cr-00234-FCD).

1 On October 25, 2011, the Trustee filed a motion seeking (1)
2 authorization for the sale of the bankruptcy estate's interest, if
3 any, in System 3, Inc , free and clear of any liens, (2) approval
4 of a related compromise of controversy (namely, the controversy
5 arising from the question of what interest, if any, the estate has
6 in System 3, Inc), and (3) a finding that the proposed buyer was
7 a good faith purchaser pursuant to 11 U S C § 363(m) (hereinafter
8 "Motion to Sell") In essence, the Trustee sought to relinquish
9 the bankruptcy estate's right to claim interest in System 3, Inc ,
10 in exchange for \$350,000 00 from the proposed buyer The sale,
11 which was subject to overbidding at the scheduled hearing, was to
12 be made free and clear of any encumbrances in order to conclusively
13 resolve any and all ownership claims that the Trustee or the estate
14 might have had with respect to System 3, Inc

15 Debtor filed opposition to the Motion to Sell Debtor also
16 requested that the sale hearing be stayed until resolution of
17 Debtor's parallel criminal proceedings pending in U S District
18 Court

19 The court found that Debtor did not have standing to object to
20 the Motion to Sell as he was not adversely and pecuniarily
21 affected by the proposed sale because there was no credible
22 suggestion that there would be a distribution of surplus funds to
23 the Debtor under 11 U S C § 726(a)(6) or that the disposition of
24 the asset otherwise would affect his rights The Motion to Sell
25 only sought to extinguish the estate's claim in System 3, Inc , and
26 did not purport to prohibit any other third party from asserting an
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1 interest in System 3, Inc The court further exercised its
2 discretion to deny Debtor's request to stay the hearing until
3 Debtor's criminal proceedings concluded

4 On November 22, 2011, for the reasons stated orally on the
5 record, the court granted Trustee's Motion to Sell (Civil Minutes
6 for Nov 22, 2011, Hearing, Dkt 366) The Order was issued on
7 November 28, 2011 (Order, Dkt 362)

8 Debtor filed the subject Motion to Reconsider on December 5,
9 2011 (Motion, Dkt 369)

10 11 III DISCUSSION

12 A motion for reconsideration made within fourteen days after
13 entry of judgment is to be treated as a motion under Federal Rule
14 of Bankruptcy Procedure 9023 10 COLLIER ON BANKRUPTCY ¶ 9023 04 (16th
15 ed), 12 MOORE'S FEDERAL PRACTICE § 59 05 (Matthew Bender 3d ed) In
16 this case, Debtor's Motion to Reconsider was timely FED R BANKR
17 P 9023

18 Rule 9023 incorporates Federal Rule of Civil Procedure 59(e),
19 which permits a court to alter or amend (that is, reconsider) a
20 judgment or order FED R CIV P 59(e) However, such relief is an
21 extraordinary remedy, to be used sparingly in the interests of
22 finality and conservation of judicial resources Accordingly, a
23 motion for reconsideration should not be granted, absent unusual
24 circumstances, unless the court is presented with newly discovered
25 evidence, the court has committed clear error of fact or law, or
26 there is an intervening change in the controlling law *Kona Ener* ,

1 *Inc v Estate of Bishop*, 229 F 3d 877, 890 (9th Cir 2000), see
2 also *Hale v United States Trustee (In re Basham)*, 208 B R 926,
3 934 (9th Cir B A P 1997) ("Reconsideration is appropriate only if
4 one of the following three grounds are present (1) manifest error
5 of fact, (2) manifest error of law, or (3) newly discovered
6 evidence ")

7 Here, Debtor's Motion to Reconsider repeats much of the
8 arguments brought forth in Debtor's opposition to the Motion to
9 Sell The court previously rejected those arguments Debtor
10 asserts that he has standing to object to the sale of System 3,
11 Inc , without providing any evidence to support this assertion

12 Debtor further argues that the court should reconsider the
13 Order due to "newly discovered" authority Debtor cites to *Lyons*
14 v *Lyons (In re Lyons)*, 995 F 2d 923, 924 (9th Cir 1993)
15 Notwithstanding the fact that this case is hardly "newly
16 discovered," it does not apply to the circumstances of this case
17 In *Lyons*, the trustee sought authorization to sell the bankruptcy
18 estate's interest in real property, as well as the interests of
19 other nondebtor co-owners without first initiating an adversary
20 proceeding to obtain authority to sell the property The Ninth
21 Circuit Court of Appeals found that this was procedurally
22 incorrect In the case at bar, the Trustee only received
23 authorization to sell the estate's interest in the sale property

24 Upon review of the record and the additional papers filed in
25 support of Debtor's motion to reconsider, the court remains
26 persuaded that the transaction was in accordance with 11 U S C
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1 § 363 and that the compromise was fair and equitable

2 Debtor has not shown that any extraordinary circumstances,
3 such as a manifest error of fact or law, exist The court
4 concludes that no grounds exist to warrant reconsideration of the
5 Order

6 **IT IS ORDERED** that the motion to reconsider, which is treated
7 as a motion under Federal Rule of Civil Procedure 59, as
8 incorporated by Federal Rule of Bankruptcy Procedure 9023, is
9 DENIED

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11 Dated February 21, 2012

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14 UNITED STATES BANKRUPTCY JUDGE
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CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office

Steven K Zinnel
11966 Old Eureka Way
Gold River, CA 95670

Susan K Smith
Chapter 7 Trustee
7485 Rush River Dr , #710-PMB 218
Sacramento, CA 95831

Howard S Nevins
2150 River Plaza Dr , #450
Sacramento, CA 95833

Dated 2/23/12


Deputy Clerk

BARBARA REYNOLDS